

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 179

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-301, IDAHO CODE, TO PROVIDE FOR THE TESTAMENTARY APPOINTMENT OF A GUARDIAN FOR A DEVELOPMENTALLY DISABLED PERSON AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 66-404, IDAHO CODE, TO PROVIDE REQUIREMENTS FOR CERTAIN GUARDIANSHIP APPOINTMENTS BY WILL; AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE THAT IF AN APPOINTMENT OF A GUARDIAN IS MADE BY WILL, SUCH APPOINTMENT SHALL BE ENTITLED TO PREFERENCE AS THE GUARDIAN IF THE PERSON SO APPOINTED BY WILL IS CAPABLE OF SERVING ON BEHALF OF THE RESPONDENT AND THE COURT FINDS THAT IT IS NOT IN THE BEST INTERESTS OF THE RESPONDENT TO APPOINT A DIFFERENT PERSON AS GUARDIAN.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 15-5-301, Idaho Code, be, and the same is hereby amended to read as follows:

15-5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON. (a) The parent of an incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. A testamentary appointment by a parent becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated, if prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both parents are dead, an effective appointment by the parent who died later has priority unless it is terminated by the denial of probate in formal proceedings.

(b) The spouse of a married incapacitated person or developmentally disabled person may by will appoint a guardian of the incapacitated person or developmentally disabled person. The appointment becomes effective when, after having given seven (7) days' prior written notice of his intention to do so to the incapacitated person or developmentally disabled person and to the person having his care or to his nearest adult relative, the guardian files acceptance of appointment in the court in which the will is informally or formally probated. An effective appointment by a spouse has priority over an appointment by a parent unless it is terminated by the denial of probate in formal proceedings.

(c) This state shall recognize a testamentary appointment effected by filing acceptance under a will probated at the testator's domicile in another state.

(d) On the filing with the court in which the will was probated of written objection to the appointment by the person for whom a testamentary appointment of guardian has been made, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the testamentary nominee or any other suitable person upon an adjudication of incapacity in proceedings under the succeeding sections of this Part.

(e) If the appointment by will is for a developmentally disabled person and there is an existing guardianship proceeding under chapter 4, title 66, Idaho Code, in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any then serving guardian ad litem for the developmentally disabled person in such proceeding and to the department of health and welfare for the region in which the proceeding was brought.

(f) If the appointment by will is for an incapacitated person for whom there is an existing guardianship proceeding in which the decedent was the sole guardian, the guardian appointed by will must also give seven (7) days' written notice of his intention to file an acceptance of appointment to any then serving guardian ad litem for the incapacitated person in such proceeding.

SECTION 2. That Section 66-404, Idaho Code, be, and the same is hereby amended to read as follows:

66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND CONSERVATORS. (1) A developmentally disabled person or any person interested in his welfare may petition for a finding of legal disability or partial legal disability and appointment of a guardian and/or conservator.

(2) The petition shall:

(a) State the names and addresses of the persons entitled to notice under subsection (4) of this section;

(b) Describe the impairments showing the respondent is developmentally disabled, the respondent's ability to receive, evaluate and communicate information, and the respondent's ability to manage financial resources and meet essential requirements for physical health or safety;

(c) State the nature and scope of guardianship and/or conservatorship services sought; ~~and~~

(d) Describe the respondent's financial condition, including significant assets, income and ability to pay for the costs of judicial proceedings; and

(e) State if the appointment is made by will pursuant to section 15-5-301, Idaho Code, and the name(s) and address(es) of the person(s) named in the will to be guardian.

(3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney to represent the respondent in the proceedings unless the respondent has an attorney, and authorize an evaluation committee to examine the respondent, interview the proposed guardians and/or conservators and report to the court in writing. The report shall contain:

(a) A description of the nature and extent of the evaluation and the alleged impairments, if any;

(b) A description of the respondent's mental, emotional and physical condition; educational status; and adaptive and social skills;

(c) A description of the services, if any, needed by the respondent to meet essential requirements for physical health and safety, and/or manage financial resources;

(d) A recommendation regarding the type and extent of guardianship or conservatorship assistance, if any, required by the respondent and why no less restrictive alternative would be appropriate;

(e) An opinion regarding the probability that the extent of the respondent's disabilities may significantly lessen, and the type of services or treatment which may facilitate improvement in the respondent's behavior, condition, or skills;

(f) The respondent's preference, if any, regarding the person or persons to be appointed as guardian and/or conservator;

(g) The suitability of the person or persons proposed as guardian and/or conservator; and

(h) The signature of each member of the evaluation committee with a statement of concurrence or nonconcurrence with the findings and any dissenting opinions or other comments of the members.

(4) Notice of the time and place of the hearing on the petition together with a copy of the petition shall be served no less than ten (10) days before the hearing on:

(a) The respondent;

(b) The respondent's spouse, parents and adult children, or if none, the respondent's closest relative, if any can be found; and

(c) Any person who is currently serving as guardian, conservator or who is providing care for the respondent.

Notice shall be served personally if the person to be served can be found within the state. If the person to be served cannot be found within the state, service shall be accomplished by registered mail to such person's last known address.

(5) The respondent is entitled to be present at the hearing in person, to present evidence, call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

(6) At the hearing the court shall:

(a) Determine whether the respondent is developmentally disabled;

(b) Evaluate the respondent's ability to meet essential requirements for physical health or safety and manage financial resources;

(c) Evaluate the ability of the proposed guardian and/or conservator to act in the respondent's best interests to manage the respondent's financial resources and meet essential requirements for the respondent's physical health or safety;

(d) Determine the nature and scope of guardianship or conservatorship services necessary to protect and promote the respondent's well-being; and

(e) Evaluate the ability of the respondent or those legally responsible to pay the costs associated with the judicial proceedings and fix responsibility therefor.

SECTION 3. That Section 66-405, Idaho Code, be, and the same is hereby amended to read as follows:

66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the respondent is not developmentally disabled but appears in need of protective services, the court may cause the proceeding to be expanded or altered for consideration under the uniform probate code.

(2) If it is determined that the respondent is able to manage financial resources and meet essential requirements for physical health or safety, the court shall dismiss the petition.

(3) If it is determined that the respondent is developmentally disabled and is unable to manage some financial resources or meet some essential requirements for physical health

or safety, the court may appoint a partial guardian and/or partial conservator on behalf of the respondent. An order establishing partial guardianship or partial conservatorship shall define the powers and duties of the partial guardian or partial conservator so as to permit the respondent to meet essential requirements for physical health or safety and to manage financial resources commensurate with his ability to do so, and shall specify all legal restrictions to which he is subject. A person for whom a partial guardianship or partial conservatorship has been appointed under this chapter retains all legal and civil rights except those which have by court order been limited or which have been specifically granted to the partial guardian or partial conservator by the court.

(4) If it is determined that the respondent is developmentally disabled and is unable to manage financial resources or meet essential requirements for physical health or safety even with the appointment of a partial guardian or partial conservator, the court may appoint a total guardian and/or total conservator.

(5) In the event that more than one (1) person seeks to be appointed guardian and/or conservator, the court shall appoint the person or persons most capable of serving on behalf of the respondent; the court shall not customarily or ordinarily appoint the department or any other organization or individual, public or private, that is or is likely to be providing services to the respondent. If an appointment of a guardian is made by will pursuant to section 15-5-301, Idaho Code, such appointment shall be entitled to preference as the guardian under this chapter, if the person so appointed by will is capable of serving on behalf of the respondent and the court finds that it is not in the best interests of the respondent to appoint a different person as guardian.

(6) Subject to the limitations of the provisions of subsection (7) of this section, guardians or conservators may have any of the duties and powers as provided in sections 15-5-312(1)(a) through (d), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order appointing a partial or total guardian or partial or total conservator under the provisions of this section must require a report to the court at least annually. In addition to such other requirements imposed by law or order, the report shall include:

- (a) A description of the respondent's current mental, physical and social condition;
- (b) The respondent's present address and living arrangement;
- (c) A description of any significant changes in the capacity of the respondent to meet essential requirements for physical health or safety or to manage financial resources;
- (d) A description of services being provided the respondent;
- (e) A description of significant actions taken by the guardian or conservator during the reporting period;
- (f) Any significant problems relating to the guardianship or conservatorship;
- (g) A complete financial statement of the financial resources under the control or supervision of the guardian or conservator; and
- (h) A description of the need for continued guardianship or conservatorship services.

(7) No guardian appointed under this chapter shall have the authority to refuse or withhold consent for medically necessary treatment when the effect of withholding such treatment would seriously endanger the life or health and well-being of the person with a developmental disability. To withhold or attempt to withhold such treatment shall constitute neglect of the person and be cause for removal of the guardian. No physician or caregiver shall withhold or withdraw such treatment for a respondent whose condition is not terminal or whose death is not imminent. If the physician or caregiver cannot obtain valid consent for medically

1 necessary treatment from the guardian, he shall provide the medically necessary treatment as  
2 authorized by section 39-4504(1)(g), Idaho Code.

3 (8) A guardian appointed under this chapter may consent to withholding or withdrawal of  
4 artificial life-sustaining procedures, only if the respondent:

5 (a) Has an incurable injury, disease, illness or condition, certified by the respondent's  
6 attending physician and at least one (1) other physician to be terminal such that the  
7 application of artificial life-sustaining procedures would not result in the possibility of  
8 saving or significantly prolonging the life of the respondent, and would only serve to  
9 prolong the moment of the respondent's death for a period of hours, days or weeks, and  
10 where both physicians certify that death is imminent, whether or not the life-sustaining  
11 procedures are used; or

12 (b) Has been diagnosed by the respondent's attending physician and at least one (1) other  
13 physician as being in a persistent vegetative state which is irreversible and from which the  
14 respondent will never regain consciousness.

15 (9) Any person, who has information that medically necessary treatment of a respondent  
16 has been withheld or withdrawn, may report such information to adult protective services or to  
17 the Idaho protection and advocacy system for people with developmental disabilities, who shall  
18 have the authority to investigate the report and in appropriate cases to seek a court order to  
19 ensure that medically necessary treatment is provided.

20 If adult protective services or the protection and advocacy system determines that  
21 withholding of medical treatment violates the provisions of this section, they may petition the  
22 court for an ex parte order to provide or continue the medical treatment in question. If the  
23 court finds, based on affidavits or other evidence, that there is probable cause to believe that the  
24 withholding of medical treatment in a particular case violates the provisions of this section, and  
25 that the life or health of the patient is endangered thereby, the court shall issue an ex parte order  
26 to continue or to provide the treatment until such time as the court can hear evidence from the  
27 parties involved. Petitions for court orders under this section shall be expedited by the courts  
28 and heard as soon as possible. No bond shall be required of a petitioner under this section.

29 (10) No partial or total guardian or partial or total conservator appointed under the  
30 provisions of this section may without specific approval of the court in a proceeding separate  
31 from that in which such guardian or conservator was appointed:

32 (a) Consent to medical or surgical treatment the effect of which permanently prohibits  
33 the conception of children by the respondent unless the treatment or procedures are  
34 necessary to protect the physical health of the respondent and would be prescribed for a  
35 person who is not developmentally disabled;

36 (b) Consent to experimental surgery, procedures or medications; or

37 (c) Delegate the powers granted by the order.